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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 ALTAIR INSTRUMENTS, INC., a
12 California corporation,

13 Plaintiff,

14 vs.

15 MARTINNI BEAUTY, INC., and DOES
16 1 through 10,

17 Defendants.

Case No. 2:17-cv-00898 R (FFMx)

PROTECTIVE ORDER

18 In light of the Stipulation of the parties filed herewith, and good cause
19 appearing therefore, **IT IS HEREBY ORDERED** as follows:

20 **I. DEFINITIONS**

21 A. Party

22 Any party to this action, including all of its officers, directors, employees,
23 consultants, retained experts, and outside counsel (and their support staff).

24 B. Disclosure or Discovery Material

25 All items or information, regardless of the medium or manner generated,
26 stored, or maintained (including, among other things, testimony, transcripts, or
27 tangible things) that are produced or generated in disclosures or responses to
28 discovery in this matter.

1 C. “Confidential” Information or Items
2 Information (regardless of how generated, stored or maintained) or tangible
3 things that qualify for protection under standards developed under F.R.Civ.P. 26(c).

4 D. “Highly Confidential -- Attorneys’ Eyes Only” Information or Items
5 Confidential Information or Items whose disclosure to another Party or
6 nonparty would create a substantial risk of serious injury that could not be avoided
7 by less restrictive means. For purposes of this case, “HIGHLY CONFIDENTIAL –
8 ATTORNEYS’ EYES ONLY” will be limited to: (i) the Parties’ non-public
9 financial information, as it relates to costs, revenues and profits generally or for
10 specific products; (ii) information of a competitively or commercially sensitive or
11 proprietary nature or trade secrets regarding any products made by or for a Party;
12 (iii) non-public customer or distributor information, including non-public
13 arrangements and agreements with customers and distributors and the prices at
14 which products are sold to customer and distributors, but not including the names of
15 the customers or identification of the products sold to them; (iv) research and
16 development materials concerning unreleased products or services; (v) the
17 confidential terms of any licenses; and (vi) any other information that the Parties,
18 through their counsel, agree in writing during the course of this litigation, would
19 create a substantial risk of serious harm if disclosed.

20 E. Receiving Party

21 A Party that receives Disclosure or Discovery Material from a Producing
22 Party.

23 F. Producing Party

24 A Party or non-party that produces Disclosure or Discovery Material in this
25 action.

26 G. Designating Party

27 A Party or non-party that designates information or items that it produces in
28 disclosures or in responses to discovery as “Confidential” or “Highly Confidential

1 — Attorneys’ Eyes Only.”

2 H. Protected Material

3 Any Disclosure or Discovery Material that is designated as “Confidential” or
4 as “Highly Confidential – Attorneys’ Eyes Only.”

5 I. Outside Counsel

6 Attorneys who are not employees of a Party but who are retained to represent
7 or advise a Party in this action.

8 J. Expert

9 A person with specialized knowledge or experience in a matter pertinent to
10 the litigation who has been retained by a Party or its counsel to serve as an expert
11 witness or as a consultant in this action. This definition includes a professional jury
12 or trial consultant retained in connection with this litigation.

13 K. Professional Vendors

14 Persons or entities who provide litigation support services (e.g.,
15 photocopying; videotaping; translating; preparing exhibits or demonstrations;
16 organizing, storing, retrieving data in any form or medium; etc.) and their
17 employees and subcontractors.

18 **II. SCOPE**

19 The protections conferred by this Order cover not only Protected Material (as
20 defined above), but also any information copied or extracted therefrom, as well as
21 all copies, excerpts, summaries, or compilations thereof, plus testimony,
22 conversations, or presentations by parties or counsel to or in other settings that
23 might reveal Protected Material. This Order does not apply to court hearings or
24 proceedings. The use of Confidential and Highly Confidential – Attorneys Eyes
25 Only information or items in court hearings or proceedings will be addressed with
26 the judicial officer conducting the proceeding at the appropriate time.

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1 **III. DURATION**

2 Even after the termination of this litigation, the confidentiality obligations
3 imposed by this Order shall remain in effect until a Designating Party agrees
4 otherwise in writing or a Court Order otherwise directs.

5 **IV. DESIGNATING PROTECTED MATERIAL**

6 A. Exercise of Restraint and Care in Designating Material for Protection.

7 Each Party or non-party that designates information or items for protection
8 under this Order must take care to limit any such designation to specific material
9 that qualifies under the appropriate standards. A Designating Party must take care to
10 designate for protection only those parts of material, documents, items, or oral or
11 written communications that qualify — so that other portions of the material,
12 documents, items, or communications for which protection is not warranted are not
13 swept unjustifiably within the ambit of this Order.

14 Mass, indiscriminate, or routinized designations are prohibited. Designations
15 that are shown to be clearly unjustified, or that have been made for an improper
16 purpose (e.g., to unnecessarily encumber or retard the case development process, or
17 to impose unnecessary expenses and burdens on other parties), may expose the
18 Designating Party to sanctions.

19 If it comes to a Party's or a non-party's attention that information or items
20 that it designated for protection do not qualify for protection at all, or do not qualify
21 for the level of protection initially asserted, that Party or non-party must promptly
22 notify all other parties that it is withdrawing the prior designation.

23 B. Manner and Timing of Designations.

24 Except as otherwise provided in this Order, or as otherwise stipulated or
25 ordered, material that qualifies for protection under this Order must be clearly so
26 designated before the material is disclosed or produced.

27 Designation in conformity with this Order requires:

28 (i) For information in documentary form (apart from transcripts of

1 depositions or other pretrial or trial proceedings), that the Producing Party affix the
2 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL —ATTORNEYS’
3 EYES ONLY” at the top or bottom of each page that contains protected material. If
4 only a portion or portions of the material on a page qualifies for protection, the
5 Producing Party also must clearly identify the protected portion(s) (e.g., by making
6 appropriate markings in the margins) and must specify, for each portion, the level of
7 protection being asserted (either “CONFIDENTIAL” or “HIGHLY
8 CONFIDENTIAL — ATTORNEYS’ EYES ONLY”).

9 A Party or non-party that makes original documents or materials available for
10 inspection need not designate them for protection until after the inspecting Party has
11 indicated which material it would like copied and produced. During the inspection
12 and before the designation, all of the material made available for inspection shall be
13 deemed “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY.” After the
14 inspecting Party has identified the documents it wants copied and produced, the
15 Producing Party must determine which documents, or portions thereof, qualify for
16 protection under this Order, then, before producing the specified documents, the
17 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or
18 “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY”) at the top or
19 bottom of each page that contains Protected Material. If only a portion or portions of
20 the material on a page qualifies for protection, the Producing Party also must clearly
21 identify the protected portion(s) (e.g., by making appropriate markings in the
22 margins) and must specify, for each portion, the level of protection being asserted
23 (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL —ATTORNEYS’
24 EYES ONLY”).

25 (ii) For testimony given in deposition, that the Party or non-party offering
26 or sponsoring the testimony identify on the record, before the close of the
27 deposition, all protected testimony, and further specify any portions of the testimony
28 that qualify as “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY.”

1 When it is impractical to identify separately each portion of testimony that is
2 entitled to protection, and when it appears that substantial portions of the testimony
3 may qualify for protection, the Party or non-party that sponsors, offers, or gives the
4 testimony may invoke on the record (before the deposition is concluded) a right to
5 have up to 15 days after receipt of the transcript to identify the specific portions of
6 the testimony as to which protection is sought and to specify the level of protection
7 being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL —
8 ATTORNEYS’ EYES ONLY”). Once this right to designate portions of the
9 transcript as Protected Material has been invoked, the entire transcript, and all
10 testimony given in the deposition, shall be treated as “HIGHLY CONFIDENTIAL –
11 ATTORNEYS’ EYES ONLY” until the 15 day period has lapsed; thereafter, only
12 those portions of the testimony that are appropriately designated for protection
13 within the 15 days shall be covered by the provisions of this Stipulated Protective
14 Order, unless a Designating party specifies that the entire transcript shall be treated
15 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
16 ONLY.

17 Transcript pages containing Protected Material must be separately bound by
18 the court reporter, who must affix to the top or bottom of each such page the legend
19 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES
20 ONLY,” as instructed by the Party or non-party offering or sponsoring the witness
21 or presenting the testimony.

22 (iii) For information produced in some form other than documentary, and
23 for any other tangible items, that the Producing Party affix in a prominent place on
24 the exterior of the container or containers in which the information or item is stored
25 the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL — ATTORNEYS’
26 EYES ONLY.” If only portions of the information or item warrant protection, the
27 Producing Party, to the extent practicable, shall identify the protected portions,
28 specifying whether they qualify as “Confidential” or as “Highly Confidential —

1 Attorneys' Eyes Only.”

2 C. Inadvertent Failures to Designate.

3 An inadvertent failure to designate qualified information or items as
4 “Confidential” or “Highly Confidential — Attorneys’ Eyes Only” does not, standing
5 alone, waive the Designating Party’s right to secure protection under this Order for
6 such material. If material is appropriately designated as “Confidential” or “Highly
7 Confidential —Attorneys’ Eyes Only” after the material was initially produced, the
8 Receiving Party, on timely notification of the designation, must make reasonable
9 efforts to assure that the material is treated in accordance with the provisions of this
10 Order.

11 **V. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

12 A. Timing of Challenges.

13 Any Party or Non-Party may challenge a designation of confidentiality at any
14 time. Unless a prompt challenge to a Designating Party’s confidentiality
15 designation is necessary to avoid foreseeable substantial unfairness, unnecessary
16 economic burdens, or a later significant disruption or delay of the litigation, a Party
17 does not waive its right to challenge a confidentiality designation by electing not to
18 mount a challenge promptly after the original designation is disclosed.

19 B. Meet and Confer.

20 A Party that elects to initiate a challenge to a Designating Party’s
21 confidentiality designation must do so in good faith and must begin the process by
22 conferring directly (in voice to voice dialogue) with counsel for the Designating
23 Party. Once the counsel for the challenging party makes counsel for the Designating
24 Party aware of his desire to meet and confer, the counsel for the parties must begin
25 the process by conferring within 10 days. In conferring, the challenging Party must
26 explain the basis for its belief that the confidentiality designation was not proper and
27 must give the Designating Party an opportunity to review the designated material, to
28 reconsider the circumstances, and, if no change in designation is offered, to explain

1 the basis for the chosen designation. A challenging Party may proceed to the next
2 stage of the challenge process only if it has engaged in this meet and confer process
3 first or establishes that the Designating Party is unwilling to participate in the meet
4 and confer process in a timely manner.

5 C. Judicial Intervention.

6 A Party that elects to press a challenge to a confidentiality designation after
7 considering the justification offered by the Designating Party may file and serve a
8 motion that identifies the challenged material and sets forth in detail the basis for the
9 challenge. Each such motion shall set forth with specificity the justification for the
10 confidentiality designation that was given by the Designating Party in the meet and
11 confer dialogue required under Paragraph V(B), *supra.*, or explain that no
12 justification was given, if that is the case.

13 The burden of persuasion in any such challenge proceeding shall be on the
14 Designating Party. Until the Court rules on the challenge, all parties shall continue
15 to afford the material in question the level of protection to which it is entitled under
16 the Producing Party's designation.

17 Any motion brought pursuant to this Section shall be governed by Local
18 Rules 37-1 and 37-1 (including the Joint Stipulation Requirement).

19 **VI. ACCESS TO AND USE OF PROTECTED MATERIAL**

20 A. Basic Principles.

21 A Receiving Party may use Protected Material that is disclosed or produced
22 by another Party or by a non-party in connection with this case only for prosecuting,
23 defending, or attempting to settle this litigation. Such Protected Material may be
24 disclosed only to the categories of persons and under the conditions described in this
25 Order. When the litigation has been terminated, a Receiving Party must comply with
26 the provisions of section X below.

27 Protected Material must be stored and maintained by a Receiving Party at a
28 location and in a secure manner that ensures that access is limited to the persons

1 authorized under this Order.

2 B. Disclosure of “CONFIDENTIAL” Information or Items.

3 Unless otherwise ordered by the Court or permitted in writing by the
4 Designating Party, a Receiving Party may disclose any information or item
5 designated CONFIDENTIAL only to:

6 (i) the Receiving Party’s Outside Counsel of record in this action, as well
7 as employees of said Counsel to whom it is reasonably necessary to disclose the
8 information for this litigation;

9 (ii) the officers, directors, and employees of the Receiving Party to whom
10 disclosure is reasonably necessary for this litigation;

11 (iii) experts (as defined in this Order) of the Receiving Party to whom
12 disclosure is reasonably necessary for this litigation and who have signed the
13 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

14 (iv) the Court and its personnel;

15 (v) court reporters, their staffs, and professional vendors to whom
16 disclosure is reasonably necessary for this litigation;

17 (vi) during their depositions, witnesses in the action to whom disclosure is
18 reasonably necessary for this litigation and who have signed the “Acknowledgment
19 and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the
20 Designating Party or ordered by the court. Pages of transcribed deposition
21 testimony or exhibits to depositions that reveal Protected Material must be
22 separately bound by the court reporter and may not be disclosed to anyone except as
23 permitted under this Stipulated Protective Order;

24 (vii) the author of the document or the original source of the information.

25 C. Disclosure of “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES
26 ONLY” Information or Items.

27 Unless otherwise ordered by the Court or permitted in writing by the
28 Designating Party, a Receiving Party may disclose any information or item

1 designated “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY” only to:

2 (i) the Receiving Party’s Outside Counsel of record in this action, as well
3 as employees of said Outside Counsel to whom it is reasonably necessary to disclose
4 the information for this litigation;

5 (ii) Experts (as defined in this Order) (1) to whom disclosure is reasonably
6 necessary for this litigation, and (2) who have signed the “Agreement to Be Bound
7 by Protective Order” (Exhibit A);

8 (iii) the Court and its personnel;

9 (iv) court reporters, their staffs, and professional vendors to whom
10 disclosure is reasonably necessary for this litigation; and

11 (v) the author of the document or the original source of the information.

12 **VII. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
13 **PRODUCED IN OTHER LITIGATION.**

14 If a Receiving Party is served with a subpoena or an order issued in other
15 litigation that would compel disclosure of any information or items designated in
16 this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL —
17 ATTORNEYS’ EYES ONLY,” the Receiving Party must so notify the Designating
18 Party, in writing (by email or fax, if possible) immediately and in no event more
19 than three court days after receiving the subpoena or order. Such notification must
20 include a copy of the subpoena or court order.

21 The Receiving Party also must immediately inform in writing the Party who
22 caused the subpoena or order to issue in the other litigation that some or all the
23 material covered by the subpoena or order is the subject of this Protective Order. In
24 addition, the Receiving Party must deliver a copy of this Stipulated Protective Order
25 promptly to the Party in the other action that caused the subpoena or order to issue.

26 The purpose of imposing these duties is to alert the interested parties to the
27 existence of this Protective Order and to afford the Designating Party in this case an
28 opportunity to try to protect its confidentiality interests in the Court from which the

1 subpoena or order issued. The Designating Party shall bear the burdens and the
2 expenses of seeking protection in that Court of its confidential material — and
3 nothing in these provisions should be construed as authorizing or encouraging a
4 Receiving Party in this action to disobey a lawful subpoena issued in another action.

5 **VIII. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.**

6 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
7 Protected Material to any person or in any circumstance not authorized under this
8 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
9 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
10 to retrieve all copies of the Protected Material, (c) inform the person or persons to
11 whom unauthorized disclosures were made of all the terms of this Order, and (d)
12 request such person or persons to execute the “Acknowledgment and Agreement to
13 Be Bound” that is attached hereto as **Exhibit A**.

14 **IX. FILING OF PROTECTED MATERIAL.**

15 In Accordance with Local Rule 79-5.1, if any papers to be filed with the
16 Court contain information and/or documents that have been designated as
17 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only,” the proposed filing
18 shall be accompanied by an application to file the papers or the portion thereof
19 containing the designated information or documents (if such portion is segregable)
20 under seal; and the application shall be directed to the judge to whom the papers are
21 directed. For motions, the parties shall publicly file a redacted version of the motion
22 and supporting papers.

23 **X. FINAL DISPOSITION.**

24 Unless otherwise ordered or agreed in writing by the Producing Party, within
25 sixty days after the final termination of this action including appeals, each Receiving
26 Party must: (a) return all Protected Material to the Producing Party; or (b) destroy
27 the Protected Material. As used in this subdivision, “all Protected Material”
28 includes all copies, abstracts, compilations, summaries or any other form of

1 reproducing or capturing any of the Protected Material. Whether the Protected
2 Material is returned or destroyed, the Receiving Party must submit a written
3 certification to the Producing Party (and, if not the same person or entity, to the
4 Designating Party) by the sixty day deadline that identifies (by category, where
5 appropriate) all the Protected Material that was returned or destroyed and that
6 affirms that the Receiving Party has not retained any copies, abstracts, compilations,
7 summaries or other forms of reproducing or capturing any of the Protected Material.
8 Notwithstanding this provision, counsel are entitled to retain archival copies of all
9 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney
10 work product, even if such materials contain Protected Material. Any such archival
11 copies that contain or constitute Protected Material remain subject to this Protective
12 Order as set forth in Section III (DURATION) above.

13 **XI. MISCELLANEOUS**

14 A. Right to Further Relief.

15 Nothing in this Order abridges the right of any person to seek its modification
16 by the Court in the future.

17 B. Right to Assert Other Objections.

18 By stipulating to the entry of this Protective Order no Party waives any right
19 it otherwise would have to object to disclosing or producing any information or item
20 on any ground not addressed in this Stipulated Protective Order. Similarly, no Party
21 waives any right to object on any ground to use in evidence of any of the material
22 covered by this Protective Order.

23 **IT IS SO ORDERED.**

24
25 Dated: May 22, 2017



26 Judge of the United States District Court

EXHIBIT A

I, _____, declare as follows:

1. My present address is: _____.
2. My present occupation or job description is: _____.
3. My present employer is: _____.
4. I have received a copy of the Stipulated Protective Order (“Order”)

entered in *Altair Instruments, Inc. v. Martinni Beauty, Inc., et. al.*, Case No. 2:17-cv-00898 R (FFMx) pending in the United States District Court for the Central District of California. I have carefully read and understand the provisions of the Order.

5. I will comply with all of the provisions of the Order. I will hold in confidence, will not disclose to anyone other than those persons specifically authorized by the Order, and will not copy or use except for the purposes of this action, any Protected Material that I receive in this action.

6. I submit to the jurisdiction of this Court for the purposes of enforcement of this Order.

Executed this ____ day of _____ 20__, in the County of _____, State of _____.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

SIGNATURE OF DECLARANT